

Quarterly Report
OF THE
ATTORNEY GENERAL
OF
ALABAMA



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THROUGH MARCH 31, 1970

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Q U A R T E R L Y R E P O R T

of the

ATTORNEY GENERAL

of

A L A B A M A

For the Period

From January 1, 1970

Through March 31, 1970

**TO THE STATE, COUNTY, AND MUNICIPAL OFFICERS OF
ALABAMA:**

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from January 1, 1970 through March 31, 1970, is published in compliance with the provisions of Title 55, Section 228, Code of Alabama 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State, and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superintendent of education, and the deputy county solicitor of his county. This section also requires that I send a copy of this report to each circuit solicitor and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, county, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

MacDONALD GALLION

Attorney General

OPINIONS

January 16, 1970

Honorable W. Warner Floyd
Executive Director
Alabama Historical Commission
304 Dexter Avenue
Montgomery, Alabama

Taxation—Exemption—Gifts to Historical Commission.

1. Act No. 168, Special Session, 1966, Legislature of Alabama, establishes the Historical Commission of Alabama.
2. Section 385(j), Title 51, Code of Alabama 1940, allows deductions for contributions to recognized educational institutions from state income tax.
3. The Historical Commission of Alabama is an educational institution within the purview of Section 385(j), *supra*.
4. Gifts of realty and personalty as well as money are allowable deductions from income tax within the purview of Section 385(j), *supra*.
5. The yardstick to be used in determining the value of the gifts of personalty and realty for purposes of deduction from taxation is the fair and reasonable market value.

Opinion by Assistant Attorney General Burson.

Dear Mr. Floyd:

Your request for an official opinion dated November 5, 1969, is as follows:

"Our agency is charged by the Alabama Legislature to accept by gift, etc., historic buildings, objects (antiques, etc.) and adjacent real property for the State of Alabama. Please tell us if gifts of real and personal property to the Alabama Historical Commission are exempt from State Income Tax.

"Your office has previously ruled gifts of money to the Alabama State Historic Preservation Fund are exempt from State Income Taxes because our agency is an educational institution. Should you rule that gifts of objects and real property have the same exemption, please give us legal directions for appraising such gifts."

Your first question, that is, whether gifts of real and personal property to the Alabama Historical Commission are deductible from Alabama income tax is answered in the affirmative. In a prior opinion, Quarterly Report of the Attorney General, Volume 129, page 51, it was determined that gifts of money to the Historical Commission were deductible to the donor under Section 385(j), Title 51, Code of Alabama 1940. The reason for the deduction was that the Historical Commission is an educational institution. The pertinent part of the prior opinion is as follows:

"A properly constituted historical foundation such as the Alabama Historical Commission is an educational institution. Words and Phrases, Educational Corporation, Vol. 14, page 131, illustrates the ratio decidendi, applied by the courts. The statement is as follows:

"The Daughters of the Republic of Texas which was organized as a corporation for the declared purpose of perpetuating the memory and spirit of the men who achieved Texan independence, and to encourage historical research into the early history of Texas, and promote the celebration of Independence Day of the Texas Republic, and erect monuments upon places made historic in the war for Texan independence, was a corporation organized for "educational" purposes within Rev. Civ. St. 1911, Art. 1121, Vernon's Ann. Civ. St. Art. 1302, permitting private corporations to be formed for educational purposes, "education" in the statutory sense meaning not merely instruction received at school, but the whole course of training, both moral, intellectual, and physical. *Conley v. Daughters of the Republic*, 156 S.W. 197, 201, 106 Tex. 80.'

"The established maxim that tax exemption statutes are to be construed most strongly against the taxpayer and in favor of the taxing authority is not applicable in the instance of charitable, religious, educational or similar organizations. In fact, the reverse is true. The Alabama case of **Home Oil Mill v. Willingham**, 68 F. Supp. 525, is authority for the above conclusion. The opinion by Judge Lynne states, in part, as follows:

"While the general rule of law is that in case of doubt, exemption provisions of tax statutes are to be construed strictly and are to be resolved in favor of the taxing power, an exception exists in the case of provisions exempting charitable, religious, educational and similar organizations. In the case of such exemptions, the rule of liberal construction is to be applied, *Trinidad v. Sagrado Orden*, etc., 263 U.S. 578, 44 S. Ct. 204, 68 L.Ed. 458; *Helvering v. Bliss*, 293 U.S. 144, 55 S. Ct. 17, 79 L.Ed. 246, 95 A.L.R. 207; *Roches Beach, Inc. v. Commissioner of Internal Revenue*, 2 Cir., 96 F. 2d 776.'

"Thus the contributions to the Alabama Historical Commission are exempt on the State of Alabama income tax return to the donors thereof."

The purpose of the Alabama Historical Commission as contained in Section 2, Act No. 168, Special Session 1966, page 191, specifically provides that the commission shall "acquire in its own name by purchase, devise, gift, bequest, assignment or transfer, buildings, objects and sites of historic, archeological or architectural significance, including adjacent properties deemed necessary for the proper setting, use and administration of same" Certainly the above language is broad enough to include gifts of real and personal property as postulated in your request for opinion. Of course, the deduction is subject to the limitation of 15% specified in Section 385(j), *supra*.

The answer to your second question, that is, what "legal directions" can be given for "appraising such gifts" poses some difficulty in that there are no standard rules and regulations for appraising the value of either real or personal property. At best, there are only certain broad guidelines which might be utilized. Since the matter herein is concerned with deductions from taxation, it would appear that what constitutes value for purposes of taxation might likewise serve as a basis for determining value for arriving at an exemption from taxation.

The Supreme Court of Alabama in the case of **Alabama Textile Products Corporation v. State**, 263 Ala. 533, 83 So. 2d 42, established the "yardstick of value" that is normally used for purposes of taxation. The Court in the **Alabama Textile** case stated, in part:

"Tax assessing officials properly used **fair and reasonable market value** in determining measuring rod to be applied in determining franchise tax to be paid by foreign corporation."
(Emphasis supplied.)

Thus, "fair and reasonable market value" is the value to be placed on gifts made to the Alabama Historical Commission for purposes of deduction to the donor under the authority of Section 385(j), *supra*.

A statement from the **Appeal of Pitney**, 28 A. 2d 660, 20 N.J. Misc. 448, further clarifies what constitutes fair and reasonable market value. Perhaps the most pertinent statement in that case is as follows:

"The market value means the fair value of the property as between one who wants to purchase and one who wants to sell, not what could be obtained for it under peculiar circumstances when a greater than its fair price could be obtained nor its speculative value; not a value to be obtained from the necessities of another; nor on the other hand, is it to be limited to that price which the property would bring when forced off at auction under the hammer. It is what it would bring at a fair

public sale when one party wanted to sell and the other to buy." (Emphasis supplied.)

The above case clearly establishes the principle of a "willing buyer" and a "willing seller" if fair and reasonable market value is to be ascertained. If the transaction is "forced" on the part of either the buyer or the seller, the price at which the property changes hands may well not be its "fair and reasonable market value."

When the term "market value" is used, it is generally construed that the property which is being valued is bought and sold with such frequency that a record of sales on the open market is readily available for examination. The case of **North American Telegraph Co. v. N. P. Ry. Co.**, C.C.A. 8, 254, establishes a mode of measurement in instances where a day-to-day market does not exist. The court in the **North American Telegraph Co.** case stated, in part, as follows:

"The term 'market value,' as the words fairly impart, indicate price established in a market where the article is dealt in by such a multitude of persons, and such a large number of transactions, as to standardize the price. Proof of such a market value can only be made by one of the recognized methods of proving the price correct in a market. Individual dealings are not competent to prove it. The term is, however, frequently used in a figurative sense, as meaning the fair or reasonable value of the property . . . that is, such a value as the property would have if it were dealt in according to the practices of a market overt. This is the meaning which the term usually has when applied to real property."

The case of **De Merville v. Merchants and Farmers Bank of Greene County et al.**, 233 Ala. 204, 170 So. 756, also considers the problem where no overt market exists. The Alabama Supreme Court in the **De Merville** case said, in part:

"Yardstick of 'reasonable market value' for ascertaining values presupposes a market for class of property involved, and where there is no market at time for such property, other elements, such as original costs, costs of buildings or improvements, rents, adaptability for future use and enjoyment, and opinion of witnesses in position to have a correct judgment as to values, must be considered."

Some additional cases which deal with the question of "fair and reasonable market value" are: **State v. Aluminum Ore Company** (1955), 263 Ala. 422, 82 So. 2d 800; **Consolidated Coal Company v. State** (1938), 236 Ala. 489, 183 So. 650; **State v. Southern Natural Gas Corp.** (1936), 233 Ala. 81, 170 So. 178; **Wisconsin Coosa Co. v. State** (1939), 231 Ala. 543, 165 So. 838; **Investors Syndicate v. State** (1933), 227 Ala. 216, 149

So. 83; *State v. National Cash Credit Association* (1932), 224 Ala. 629, 141 So. 541; *Penn Mutual Life Ins. Co. v. State* (1931), 223 Ala. 332, 135 So. 346; *Hollingsworth v. Whitney Co. v. State*, 241 Ala. 96, 1 So. 2d 387; *State v. Jackson Securities & Investment*, 243 Ala. 83, 8 So. 2d 573; *State Department of Revenue v. Birmingham Realty Company*, 255 Ala. 269, 50 So. 2d 760; *Dowling v. Texas Company*, 248 Ala. 96, 26 So. 2d 590; *Louisiana Highway Commission v. Israel*, 205 La. 669, 17 So. 2d 914, *State v. Dowling*, 18 So. 2d 616, 205 La. 1061.

For the purposes of deduction from taxation, the donor and the donee at the time the gift is made should arrive at a fixed money value concerning any gift of realty or personalty to the Alabama Historical Commission. Ultimately, however, the Department of Revenue will be the judge of the value of a gift insofar as deduction under Section 385(j), *supra*, is concerned.

Very truly yours,

MacDONALD GALLION
Attorney General

January 16, 1970

Honorable Maury Friedlander
County Attorney
County Commission
Mobile County
Mobile, Alabama

Counties—Supernumerary Circuit Judges.

A County may expend funds for the renovation of an office and space for a Supernumerary Circuit Judge.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your request for an official opinion, bearing date of December 15, 1969, is as follows:

"Honorable Robert T. Ervin, Judge of the Thirteenth Judicial Circuit, has recently announced his impending retirement. Judge Ervin is eligible for, and anticipates receiving, an appointment as a Supernumerary Judge for the State of Alabama. Mobile County comprises the entire Thirteenth Judicial Circuit and we have more than four Circuit Judges, and less than nine. At present, there are seven Circuit Judgeships in Mobile County, all of which are filled. Judge Ervin's retirement will leave one

unfilled. We have seven courtrooms with offices for seven Judges.

"Judge Ervin has requested the County Commission to furnish for him an office in the Courthouse in anticipation of his appointment. Until such time as the vacancy created by Judge Ervin's resignation is filled by the Governor or by election, the office presently being used by Judge Ervin will be available. At such time as the vacancy is filled, there would be no office available for the use of Judge Ervin, and if he is to be furnished an office, space which is available in the Courthouse must be renovated for his use.

"Title 13, Section 43, sets forth that the Commission must furnish a courtroom for each of the Circuit Judges, and we would interpret this to mean an office as well as courtroom facilities. However, upon Judge Ervin's resignation, and until such time as he is appointed Supernumerary Judge and assigned to our District, this particular section would not appear to be applicable. "Our question is whether or not it is permissive to extend funds of the County for the renovation of an office and space for a Supernumerary Judge under the above circumstances? "We know that you will give our inquiry your usual prompt consideration."

My answer to your inquiry is in the affirmative.

Section 2 of Act No. 288, General Acts 1945, as amended, which Act provides for Supernumerary Circuit Judges, states that Supernumerary Circuit Judges shall take the oath of office as Supernumerary Circuit Judges, as prescribed by the Constitution for judicial officers, and shall exercise all of the duties, powers and authority of the Judges of the Circuit Court. They are, therefore, Circuit Judges on a supernumerary status.

Title 12, Section 12, Subdivision (1), Code of Alabama 1940, provides that the Court of County Commissioners has the authority to direct and control property of the county, and may furnish and designate rooms to be occupied by the officers entitled to rooms in the courthouse, including Circuit Judges.

As hereinabove pointed out, a Supernumerary Circuit Judge is in truth and in fact a Circuit Judge, with all the powers, authority and duties of other Circuit Judges, on a supernumerary status. It, therefore, necessarily follows that a county may legally expend county funds for the renovation of an office and space in the courthouse for Supernumerary Circuit Judges.

Yours very truly,

MacDONALD GALLION
Attorney General

January 20, 1970

Mr. M. D. Herring, Jr.

License Inspector

Alabama Department of Revenue

Room 217, County Court House

Montgomery, Alabama 36104

Licenses — Motor Vehicles — Penalties.

1. Under the Motor Vehicle License Tax Laws (Title 51, Chapter 20, Article 8, Code of Alabama 1940, Recompiled 1958), the license taxes on motor vehicles become due when the motor vehicle involved is first used and operated on the highways of this state during the license year, and at such time the license attaches and begins to run on the motor vehicle involved and runs continuously and without stopping for the remainder of the license tax year, unless it is paid. Moreover, this is particularly the case under Title 51, Section 835(c) and (d), *supra*, even though the motor vehicle is sold or changes hands one or more times during the license year.

2. Normally speaking, and where motor vehicles are operated on the state highways at the beginning of the license tax year (on October 1, and thereafter), the license becomes due on October 1, and is delinquent on November 16, and the owners of such vehicles, where the license is not paid before November 16, are subject to a fifteen percent penalty for delinquency. Moreover, the fact that a vehicle is sold, or transferred to another person, would not serve to terminate such liability for the license tax and penalty would continue to be due, and under Title 51, Section 835(c) and (d), *supra*, the Judge of Probate or Commissioner of Licenses cannot lawfully issue a license for any such vehicle until the license tax and penalty have been paid.

3. In the light of what has been stated in the foregoing headnotes, where an automobile has been operated on the highways of this state from October 1, 1969, to October 30, 1969, and sold or transferred to a dealer on October 31, 1969, and in turn sold by the dealer on November 21, 1969, and the license tax for the 1970 license tax year (October 1, 1969, through September 30, 1970) had not been paid, then the new or last said owner would be required under Title 51, Section 835(c) and (d), *supra*, when he applies for a license for such vehicle, whether there has been a citation issued or he does so voluntarily, to pay the license

tax for the full license year (four quarters) and the fifteen percent penalty for delinquency, plus all applicable interest and fees, before the Judge of Probate of the county can lawfully issue a license tag for said vehicle.

Opinion by Assistant Attorney General Burton.

Dear Mr. Herring:

Your request for an official opinion from this office dated November 25, 1969 is as follows:

"We have had quite a controversy concerning cases where automobiles have been operated on the state highways on or after October 1, at the beginning of the license tax year, and are then sold by the private owner to a dealer who puts the car involved in his sales inventories, and later sells the car to a third party from his inventories. Take for instance the following case:

"A car was operated on the highways of Alabama by James Smith, who lives in Montgomery County, Alabama, from October 1, 1969, to October 30, 1969. This car was traded to an automobile dealer in Montgomery County on October 31, 1969, and said dealer put the car in his sales inventories on said date and it remained there until November 21, 1969, when he sold said automobile from his inventories to one John Jones of Montgomery, Alabama.

"On November 24, 1969, Mr. Jones, the new owner, went to the office of the Judge of Probate of Montgomery County to purchase a 1970 license tag for said vehicle. The Judge of Probate insisted that Mr. Jones sign the required affidavit or pay the 15 percent penalty for delinquency before he would issue a 1970 tag to Mr. Jones. Mr. Jones refused to sign the affidavit or pay the penalty and insisted and still insists that he can, under said facts, purchase a 1970 tag for said vehicle by paying only the license tax and the issuance fee, and without making the affidavit or paying the 15 percent penalty for delinquency. "My question is whether Mr. Jones as the purchaser of said automobile from the dealer and as taken directly from said dealer's inventories, would be, under the circumstances subject to the 15 percent penalty, and the payment thereof, in addition to the license tax for the full license tax year and issuance fee, before the Judge of Probate can lawfully issue the requested 1970 tag for Mr. Jones.

"In view of the fact that we have several cases which are now being held in abeyance pending your ruling in this respect, I would appreciate very much your giving this matter your very best attention."

My answer to your question is in the affirmative.

In fact your question appears to have been, in effect, answered accordingly some 31 years ago by the Supreme Court of Alabama in the case of **Henry v. Drennen Motor Car Company**, 235 Ala. 559, 180 So. 563. In that case the court was construing Section 353 (a)-(g), inclusive, of the General Revenue Act of 1935, General Acts 1935, pp. 559 and 560). However, that section of the General Revenue Act of 1935 has been brought forward with practically no material change having been made therein as Section 835 of Title 51, of the Code of Alabama 1940, and said Code as Recomplied in 1958.

Insofar as affecting your question, only the delinquent date as to the payment of motor vehicle license taxes (as distinguished from business and professional license taxes) has been changed since the decision in **Henry v. Drennen Motor Car Company**, supra, in 1938. Schedule 158.17 of Section 348 of the 1935 General Revenue Law (General Acts 1935, page 527) provided at the time that motor vehicle licenses were to be due on October 1 of each year and delinquent on November 15, thereafter. By Act No. 212 of the Regular Session of 1939 (General Acts 1939, page 363) Schedule 158.17 of Section 348 of the 1935 General Revenue Law was amended to provide that motor vehicle licenses shall become due on November 15 of each year and delinquent after that date. However, by Act No. 576 of the 1943 Regular Session said 1939 Act (which had been incorporated into the 1940 Code as Section 710 of Title 51) this statute was again amended to provide that the due date for such licenses shall be October 1, and the delinquent date November 16, next thereafter, and so it remains today.

In the **Drennen Motor Car Company** case the Supreme Court of Alabama held that an automobile dealer who had been cited by the license inspector was liable for the payment of the license and the fifteen percent penalty for delinquency under Section 353(c) of the General Revenue Act of 1935 on an automobile which the dealer procured from an individual owner in this state on November 20, 1937, where the license for the year had not been paid, and where said former owner had operated the automobile on the highways of this state between October 1 and November 20, 1937. Moreover, the court also held that under said statute the penalty would attach, where the license is delinquent, regardless of whether the owner had been cited or not. Section 353(c) of the General Revenue Act of 1935 has been brought forward practically without and change having been made therein as Section 835(c) of Title 51, Code of Alabama 1940, Recomplied 1958.

Under **Henry v. Drennen Motor Car Company**, supra, it also follows that where a person purchases a car, under said circumstances, from a dealer and the license tax and the penalty for delinquency have not been paid, such purchaser from the dealer, whether he is cited or voluntarily applies for a license for said vehicle, would be required (in addition to paying the ad valorem tax under Title 51, Section 704, as amended, supra, if any is due) to pay the license tax on said vehicle

for the entire license year (four quarters) and also the penalty for delinquency, plus all applicable interest and fees, before a license for said car for the license year could be lawfully issued to him by the Judge of Probate of the county involved.

Where such motor vehicle is operated on the state highways on October 1, or during the month of October at the beginning of the tax year, the license tax attaches and becomes due in regard thereto when the vehicle is first used or operated at such time on the state highways, and when the tax once so attaches it runs without stopping for the entire license tax year, that is, for four quarters and from October 1, through the following September 30. The fact that the vehicle was sold during the year by the owner to a dealer and then in turn by the dealer to another person would not change the situation. The tax having once attached runs under the circumstances as have been enumerated for the entire license year. Moreover, where the tax is not paid by November 15, then on November 16 it is delinquent, and a license cannot be lawfully issued for said vehicle until the tax and the penalty have been paid, regardless of the fact that the vehicle might have been sold or has changed hands one or more times during the same license year. **Henry v. Drennen Motor Car Company**, *supra*. See also Quarterly Reports of the Attorney General, Volumes 4, 18 and 9, pages 100, 20 and 118, respectively.

In the opinion reported in Quarterly Report of the Attorney General, Volume 9, page 118, the question, insofar as material to your inquiry, was as follows:

“ 2. If A owns an automobile and drives it to a dealer on October 2nd and sells same to a dealer and he in turn resells this same car to another owner on November 15th and the last mentioned owner applies for a license on November 15th is he liable for the penalty for the car being operated on October 2nd or could he make affidavit that the car had not been operated on the highways while in his possession without proper license and avoid paying the penalty.’ ”

In that opinion said question was answered by this office as follows:

“The answer to the second question is covered by an opinion of this office under date of July 30, 1936, addressed to you, which is found in Quarterly Report of Attorney General, Vol. IV, on page 100, and holds as follows:

“ ‘Licenses — When License Inspector has cited person, describing motor number and car, to buy license, and said person sells the car to another person without purchasing license and the second owner applies for a license, **he should be required to pay the penalty provided by Subsection (c) of Section 353 of the 1935 Revenue Act** and citation fee provided by Subsection (g) of Section 353 of the 1935 Revenue Act by virtue of the citation issued to the first owner thereof.’ ”

"Therefore, under the facts set out in your inquiry, the person making application for automobile license on November 15 would be liable for the penalty for delinquency in the purchase of said license by virtue of the fact that the said automobile had been driven on the highways of the State subsequent to the beginning of the license year on October 1, notwithstanding the fact that it was so driven thereon by a prior owner and not by the present owner, who is making application for the license. However, in this situation the present owner would not be subject to the citation fee unless a citation had been issued to the prior owner, a copy of which had been filed with the probate judge, on which was shown the motor number of the vehicle." (Emphasis supplied.)

Under Title 51, Section 835 (c) and (d), *supra*, a license cannot be lawfully issued for a vehicle under such circumstances and also those enumerated by you, until the license tax and penalty have been paid, regardless of the fact that the prior owner sells the vehicle to a dealer, and the dealer in turn sells the car to another person and regardless of who makes application for the license. **Henry v. Drennen Motor Car Company**, *supra*, and Quarterly Reports of the Attorney General, Volumes 4, 18 and 9; pages 100, 30 and 118, respectively.

This has been made very clear under the following provisions of Title 51, Section 835, *supra*:

"(c) All licenses levied by this title except as otherwise provided shall be due and payable as of October first of each year and shall be delinquent November first thereafter. Where any license issuable by the probate judge or commissioner of licenses shall be delinquent, the same shall be subject to a penalty of fifteen percent of the amount of the license, **which penalty must be collected by the probate judge or commissioner of licenses when the license is taken out together with interest at six percent from the date of delinquency**; provided, that the penalty for delinquency in payment of motor vehicle licenses shall in no case be less than one dollar and fifty cents. (d) **It shall be unlawful for any probate judge or other officer to fail to collect such penalties when issuing such license.** (Emphasis supplied.)"

Of course, under Title 51, Section 710, Code of Alabama 1940, Re-compiled 1958, motor vehicle licenses are now expressly said to be due on October 1, and delinquent on November 16, next thereafter.

About the only difference now from the situation that prevailed in 1937 under Schedule 178.17 of Section 353 of the General Revenue Act of 1935 then is that motor vehicle licenses were delinquent on November 15 under that act, while under the present law they are delinquent on November 16, if not paid before that date. Therefore, the case of **Henry v. Drennen Motor Car Company**, *supra*, and also the

opinions of this office, above referred to, appear to still correctly state the law on the subject. They also clearly appear to answer your question in the affirmative.

Very truly yours,

MacDONALD GALLION
Attorney General

February 4, 1970

Honorable John M. Puryear
Judge of Probate
Tuscaloosa County
Tuscaloosa, Alabama

Taxation—Tax Sales—Probate Court—Department of Revenue—Tax Assessors.

Procedure discussed as to manner in which the State may disclaim on its records, any interest in lands that have been bid in by the State at tax sale.

Opinion by Assistant Attorney General Payne.

Dear Judge Puryear:

Your letter requesting opinion of this office dated January 16, 1970, is as follows:

"I would very much appreciate your opinion in answer to two questions pertaining to the Van de Graff land located adjacent to Hargrove Van de Graaff Airport in Tuscaloosa County. This land is now owned by the heirs of Judge and Mrs. A. S. Van de Graaff, except a portion recently acquired from them by the City of Tuscaloosa for expansion of the airport.

"Briefly, the land in question, known as the Cherokee place, was sold for taxes in 1938. At that time it was assessed in the name of Mrs. A. S. Van de Graaff, who owned only a life estate. Mrs. Van de Graaff died on November 24, 1941. The State had bought the land at the tax sale, and upon Mrs. Van de Graaff's death, the State's interest terminated. See Code of Alabama, Title 51, Section 276 and cases, **Finerson v. Hubbard**, 255 Ala. 551, 52 So. 2d 506 (1951); **Bell v. Williams**, 256 Ala. 298, 54 So. 2d 582 (1951). The record of this tax sale is in my office in the Volume of tax sales for the years 1937, 1938 and 1939 at Page 174 (old Page No., Page 92).

"First Problem: It is my understanding that the State main-

tains in Montgomery a list of property it has bought at tax sales throughout the state. It receives inquiries from time to time for a list of land in a particular locality that is owned by the State and that is for sale. Apparently the Cherokee place is still on this list. Therefore, when a person inquires of the State Department of Revenue whether the Cherokee place is for sale, it is necessary for someone in the office of the State Department of Revenue to review the history of this place, the tax sale, the termination of the State's interest because of the termination of the life estate, etc., and to inform the interested person that the land is not actually for sale because the State has no interest in it. So the problem is how to have the Cherokee place removed from the list in order to avoid the trouble and confusion in having to determine that this land is not for sale. It is my understanding that some person has inquired of the Department of Revenue recently about the possibility of buying some of this property, and that inquiry apparently has brought this problem up.

"FIRST QUESTION: What can the State Department of Revenue do to have its records show that the State no longer owns an interest in the Cherokee place and to remove this land from the aforesaid list of property?

"Second Problem: This problem arises from the fact that the Probate Office of Tuscaloosa County shows a record of the tax sale. There should be some way to put a notation on the Probate record to the effect that the State of Alabama no longer has an interest in the property because of the termination of the life estate.

"SECOND QUESTION: Do I have the authority to make an entry on the aforesaid record of the tax sale in my office to the effect that the State's interest in said property terminated upon the death of the life tenant, Mrs. Minnie C. Van de Graaff (widow of Judge A. S. Van de Graaff) and that the tax sale is no longer a lien or other encumbrance on said property?"

In short, the above facts, in part, relate to reversioner and remainderman rights where lands involving a life estate have been sold for taxes. This subject has so firmly been established by statutory and case law in this State that I feel a prolonged exposition is not necessary.

The subject of life estates and remainders was considered in *Flinnerson, et al. v. Hubbard, et al.*, 255 Ala. 551, 52 So. 2d 506. There it was stated:

"It is expressly provided by Section 276, Title 51, Code of 1940, that a tax sale of real estate shall not convey the right, title or interest of any reversioner or remainderman therein. Furthermore it is expressly provided in Section 295, Title 51, Code of

1940, that what has been called the 'short statute of limitations' has no application to cases where real estate is sold which is not the subject of taxation. Clearly whether it was the duty of Mary Philpot or perhaps Cora Sankfield or someone else to pay the taxes, it was not the duty of these plaintiffs to pay the taxes during the life of Mary Philpot and no sale made for nonpayment of taxes due during her lifetime could affect their rights. *Gunter v. Townsend*, 202 Ala. 160, 79 So. 644; *State v. Clarke*, 240 Ala. 362, 199 So. 543; Sections 276 and 295, *supra*."

See Quarterly Report of Attorney General, Vol. 11, Page 58, for comparable factual situation.

Obviously, the sale of the Van de Graaff lands for taxes in 1938 which involved the life estate, did not in any manner affect the rights of the heirs of Mrs. Van de Graff who were the remaindermen. Your first question, in substance, is what can the State Department of Revenue do to have its records show that the State no longer owns an interest in the lands in question and how can they be removed from the list of property in the Revenue Department shown to have been sold for taxes. Your second question pertains to whether you have the authority to make an entry on the record of the tax sale in your office to the effect that the State's interest in said property terminated upon the death of the life tenant, and that the tax sale is no longer a lien or other encumbrance on said property.

Before specifically attempting to answer either of these questions, I would like to advert as to what you cannot do in the premises, as I see it. The State Revenue Department, in my opinion, cannot certify or state that it no longer owns an interest in the property in question by reason of the fact that, for instance, only a life interest in the lands was sold at the 1938 tax sale; or, any statement with reference to where the title does lie with respect to the sale. I think this would be tantamount to removing a possible cloud on title which the Land Commissioner does not have authority to do. More about this presently.

With respect to your second question I do not think you have the authority to make an entry on the record of the tax sale in your office "to the effect that the State's interest in said property terminated upon the death of the life tenant, Mrs. Minnie C. Van de Graaff (widow of Judge A. S. Van de Graaff), and that the tax sale is no longer a lien or other encumbrance on said property." As is the case of the Revenue Department, such an entry would be a conclusion on your part with respect to the facts involving the sale in question. It would be like unto the giving of a title opinion on your part. I think the records should be left to speak as it appears in the Revenue Department and on the records in your office, as these entries are muniments of title or could be. Whether or not the death of the life tenant terminated the State's interest or removed a lien from the property as an encumbrance is a matter that should be left to those abstracting the title or otherwise authorized to render a title opinion.

As you know, the Commissioner of Revenue is the *ex officio* Land Commissioner of the State. Title 51, Section 278, Code of Alabama 1940. Section 279, Code, *supra*, defines his general duties with respect to real estate bought in by the State at tax sales; Section 280, Code, *supra*, authorizes certain duties to agents of the Land Commissioner with respect to the property purchased as aforesaid; and Section 282, Code, *supra*, enumerates certain action to be taken by the Land Commissioner and transmitted to the tax assessor, etc.

POLICY OF THE STATE

The first paragraph in your letter of request states: "This land is **now owned** by the heirs of Judge and Mrs. A. S. Van de Graaff" (Emphasis added.) Consequently, I must necessarily assume that the lands in question are now and have been returned to the tax rolls of the State and are being assessed, and taxes paid thereon. It is not the policy of the State to become a landowner merely for the sake of owning land involving tax matters. In **Downing v. City of Russellville**, 241 Ala. 494, 3 So. 2d 34, 42, the Court declared:

"It is not the policy of the state to become a landowner through its tax laws but its aim is to collect its revenues and leave the ownership of lands in the citizen, and **on the tax rolls.**"

(Emphasis added.)

This seem to be precisely what is being done at the present time in the case of the Van de Graaff land.

There are certain situations in which the **practical** approach must be followed in resolving a particular status. I think your case poses such an approach. I think your first question can be answered in this manner: Since it reasonably appears that the lands in question are now on the tax rolls, I think a certificate from the tax assessor of the county to the State Revenue Department certifying the fact that the lands (giving the description) are now back on the tax rolls and are being assessed and taxes paid thereon, and filed by the Revenue Department in its records would be proper. Thereupon, the Revenue Department, through its appropriate personnel, could certify and file a certificate with you as Probate Judge and/or with the tax assessor or collector, as the case may be, that the State of Alabama claims no interest in and to the real estate in question. In such an instance, there would be no necessity for giving any reason or reasons as to why the State fails to claim an interest. The fact that the property has been restored to the tax rolls, as certified by the tax assessor, would be sufficient reason should any inquiry be made in this regard. The question of title and related aspects would be and is addressed to those who may be interested in such an aspect.

Your second question is answered to this effect: Upon receipt by you of the certificate from the State Revenue Department disclaiming any interest in the lands, you could enter such fact on the record of the

sale which took place in 1938, that the State, by said certificate, does not claim any interest in the property. It is apparent, that what I am saying here is merely suggestive as to the wording of any certificate forwarded by the parties referred to herein. Any form of certificate importing in substance what I have said, of course, would be sufficient.

In my opinion, I think the Land Commissioner has the authority to clear his records with respect to the property in question, in the manner or like manner as indicated above. The record of the tax sale in question, both in the Probate Court and the Land Commissioner's office, remains intact. Thus, should the occasion arise, those running an abstract of the title, or preparing a title opinion are not hindered in any respect insofar as involves the record of the transaction.

Though not necessarily relevant to your request, I might state in closing, that any taxes due from the life estate of Mrs. Van de Graaff, or any interest the State may have had in her life estate, has long been barred by the doctrine of prescription. *State v. Mudd*, 273 Ala. 579, 143 So. 2d 171, 175, 176. See also Quarterly Report of Attorney General, Vol. 11, supra. It should be borne in mind that this opinion is not one of general application, but is necessarily limited to the factual background set out in your letter of request.

Very truly yours,

MacDONALD GALLION
Attorney General

February 4, 1970

Honorable Marion H. Wilkins

Highway Director

State Highway Department

Montgomery, Alabama 36104

Highways and Highway Department—Eminent Domain—
Interest—State and State Departments.

1. A property owner whose land is the subject of eminent domain proceedings brought by the State, County or City for highways is entitled to interest on the probate award from the day the condemnor takes possession of the property until the day of final judgment in Circuit Court whether the appeal to the Circuit Court be by the condemnor or by the condemnee.

2. Interest is due to be paid by the condemnor on appeal to the Supreme Court of Alabama from the judgment of the Circuit Court until final judgment in the Supreme

Court of Alabama only where such appeal is taken by the condemnor and the appeal is affirmed by the Supreme Court of Alabama.

Opinion by Assistant Attorney General Tyson.

Dear Sir:

Your recent letter which requests our official opinion is as follows:

"During the 1969 Session of the State Legislature, an act was passed as Senate Bill 8 providing for the payment of interest in certain stated cases in condemnation proceedings on appeals by the State. From a reading of the Act, it appears that the Legislature provided that in those cases where the State of Alabama is Condemnor and, further, an appeal is taken by the State of Alabama from a judgment of the Probate Court and/or from a judgment in Circuit Court and further, where the State of Alabama appeals the case to the Supreme Court of Alabama and, further, where the Supreme Court finally affirms the case on such appeal, then and in all those cumulative events, the property owner should be awarded interest on the damages awarded from the date of the judgment from which the original appeal was taken.

"Just prior to the passage of the foregoing Act and specifically in the October Term, 1968-1969, the Supreme Court of Alabama, in the case of **Laura E. McLemore, et als. vs. Alabama Power Company**, 3 ABR 1465, stated generally that when a Condemnor has appealed to Circuit Court and has taken possession of the property, the landowner is entitled to interest on the award from the time he is deprived of the use of the land and award until the time of the award in the Circuit Court. The Court further decided that the landowner is not entitled to interest on a judgment of the Circuit Court, awarding compensation, from the date of the judgment to the date of affirmance on appeal. You will note that in the McLemore case the Condemnor was a public utility as distinguished from the State of Alabama and, also, please note that the Condemnor perfected the appeal from the Probate Court to the Circuit Court.

"I would appreciate your office advising me on the following questions:

- "1. Where the State of Alabama is Condemnor, is the State required to pay interest only in those cases and instances where the concurring events set forth in the legislative act of Senate Bill 8 are as specifically outlined above?
- "2. In the event the answer to Question 1 is in the negative, please advise me as to the interest that is to be paid by the State as Condemnor to the property owner in the following instances.

- "a. The interest payable from the taking of possession by the State until the final award in Probate Court.
- "b. The interest payable from the Probate award to the Circuit Court award on appeal by either the property owner or the condemnor, State of Alabama.
- "c. The interest payable on the award in Circuit Court on an appeal from the Circuit Court to the Supreme Court of Alabama by the property owner or the Condemnor, State of Alabama."

The answer to question 1, as above stated, is in the negative as, among other reasons, eminent domain proceedings to take property for highways may be brought in the name of the county or municipality in which the land is located. See Title 23, Section 25, and Title 23, Section 25½, Code of Alabama 1940, Recompiled 1958. Other reasons for this answer will be set out below.

The provisions of Act No. 201, 1969 Special Session of the Alabama Legislature, are as follows:

"Section 1. In any event in any case now or hereafter pending, when property is condemned for highways and an appeal is taken by the State from a judgment of a Court of competent jurisdiction and, if the award of damages is affirmed on appeal by the Supreme Court of Alabama; then, in such event, the property owner shall be entitled to interest at six per cent per annum on the amount of damages awarded from the date of the rendition of the judgment awarding such damages. Provided, however, that such interest shall not be effective on any portion of the funds made available or offered to the owner after the rendition of the judgment awarding such damages by the probate court or the Circuit Court as the case may be.

"Section 2. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law."

In order to answer question 2, sections a, b, and c, a study of the applicable decisions of the Supreme Court of Alabama is here appropriate. The Supreme Court of Alabama has on several occasions noted that the purpose of interest on a judgment where the condemnor took the appeal was for the purpose of making the landowner "whole," inasmuch as he was denied the right to the use of his lands, or to the award itself until the litigation is concluded. The Supreme Court has commended this inequity to the attention of the Alabama Legislature. See **Southern Electric Generating Company vs. Lance**, 269 Ala. 25, 110 So. 2d 627; **State vs. Moore**, 269 Ala. 20, 110 So. 2d 635; and **State vs. LeCroy**, 279 Ala. 428, 186 So. 2d 142.

As noted in **State vs. LeCroy**, supra, "A condition to the right of a condemnor to take possession of land being condemned is the deposit

in court of the amount of the award. Code 1940, Title 19, Sections 18 and 24. But no interest accrues on the deposit. Nor may it be withdrawn by the landowner. See: **Ex parte Lance**, 267 Ala. 639, 103 So. 2d 753. . . .”

Further, the Supreme Court of Alabama has expressly determined that the trial court correctly awarded interest from the day on which the property was occupied by the State of Alabama, which was the day the land was appropriated by the condemnor, and on which it became precluded from abandoning the proceeding. **Southern Railway Company vs. Cowan**, 129 Ala. 577, 29 So. 985, 988; **Morton Butler Timber Company vs. United States**, 91 Fed. 2d 884; **Haig vs. Wateree Power Company**, 119 S.C. 319, 112 S.E. 55; **Jefferson County vs. Adwell**, 267 Ala. 544, 103 So. 2d 143; and **McLemore vs. Alabama Power Company**, 284 Ala._____, 228 So. 2d 780, 785.

Specifically, addressing this opinion to question 2, sections a, b, and c, it would appear that interest is due the property owner where the County, State or Municipality has instituted eminent domain proceedings for highways only upon the “taking of possession by the condemnor under the deposit in court of the amount of the award.” Title 19, Sections 18 and 24, and an appeal is taken to the Circuit Court either by the condemnor, **Jefferson County vs. Adwell**, 267 Ala. 544, 103 So. 2d 143, or by the property owner—condemnee, **McLemore vs. Alabama Power Company**, 284 Ala._____, 228 So. 2d 780, and that such interest is allowable from the day on which the condemnor takes possession until the day of judgment in Circuit Court regardless of whether the damages in Circuit Court were fixed by the Court or the jury. **McLemore vs. Alabama Power Company**, supra.

In brief, if there is no appeal from the probate court award, then no interest is due to be paid by the condemnor under Act No. 201, 1969 Special Session of the Alabama Legislature, since a condition of interest on the aforesaid statute is that an appeal be taken.

However, as above noted, interest is due to be allowed under the statute from the day the condemnor takes actual possession until the date of the jury’s verdict in Circuit Court, whether the appeal be by the condemnor to the Circuit Court, **Jefferson County vs. Adwell**, supra, or whether such appeal to the Circuit Court be by the property owner — condemnee, **McLemore vs. Alabama Power Company**, supra.

In dealing with the question of interest on appeal to the Supreme Court of Alabama, the Supreme Court of Alabama has noted that the right of appeal is one by statute and that interest on such award is a matter which addresses itself to the sound discretion of the Alabama Legislature. Because of this, the allowance of interest on an appeal from the Circuit Court to the Supreme Court of Alabama is allowable only where such appeal is taken by the condemnor to the Supreme Court of Alabama and the case there affirmed on appeal. See Act No. 201, supra.

This office is not unmindful of certain inequities which might arise by virtue of allowing interest only where the condemnor takes an appeal to the Supreme Court, but such matters address themselves properly to the Legislature of Alabama for appropriate decision.

It should be noted, in passing, that the amount of any potential interest due may be reduced by an amount paid in Court or tendered under the statute in question.

I trust this answers your inquiry.

Yours very truly,

MacDONALD GALLION
Attorney General

February 6, 1970

Honorable T. E. Martin
Attorney

Housing Authority

City of Montgomery

Bell Building

Montgomery, Alabama 36104

Municipalities — Contractors — Contracts —
Housing Authority — State Licensing Board for
General Contractors — Words and Phrases.

1. A municipal housing authority may contract for reroofing and gutter repairs with one who does not hold a license issued by the State Licensing Board for General Contractors.

2. The term "construct" is not synonymous with the term "repair."

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion dated January 29, 1970, is as follows:

"Recently the Housing Authority of the City of Montgomery was allocated certain Federal funds for a Modernization Program covering certain projects, some of which required re-roofing, gutter repair, etc. I am enclosing, for your information, a copy of the cover sheet of the specifications that went out to the various bidders covering the work involved.

"In response to the specifications, the Housing Authority received six (6) bids and on tabulation of the bids found that Jones Brothers Roofing Company of Montgomery was the low bidder. The second low bidder then took the position that Jones Brothers was not a qualified bidder because he was not a licensed contractor and because the bid involved an amount over \$10,000 relying, I presume, upon Title 46, Sections 65 of Chapter 4, Code of Alabama 1940.

"In view of the fact that this work is being done with Federal funds and it is not an improvement but strictly a repair job under the necessity to maintain the various projects, we feel that it would be proper to accept the low bid which, incidentally was required by the Department of Housing and Urban Development, the Federal Agency furnishing the funds for this particular work.

"I advised the Housing Authority Board at their meeting on yesterday, that, in my opinion, we would be within our rights to contract this work to the low bidder whether he was a licensed contractor or not.

"I further suggested that if they desired I would be glad to request an opinion from you as to this matter.

"Time being the essence of the matter as these repairs are vitally needed at the present, I would appreciate your early consideration to this request and an opinion at the earliest feasible date."

You have informed me that the bid submitted by the contractor to which your request refers exceeds \$20,000.00.

Title 46, Chapter 4, Code of Alabama 1940, as amended, provides for the licensing of general contractors. This is a regulatory measure under the police power rather than a revenue enactment. The entire chapter must be construed together. Quarterly Report of Attorney General, Volume 37, page 5.

Title 46, Section 65, Code of Alabama 1940, as amended by Act No. 571, Acts of Alabama 1959, page 1429, reads as follows:

"Definitions. — For the purpose of this chapter a 'general contractor' is defined to be one who, for a fixed price, commission, fee or wage, undertakes to construct or superintend the construction of any building, highway, sewer, grading, or any improvement or structure where the cost of the undertaking is twenty thousand dollars or more, and any one who shall engage in the construction or superintending the construction of any structure or any undertaking or improvements above mentioned, in the State of Alabama, costing twenty thousand

dollars or more, shall be deemed and held to have engaged in the business of general contracting in the State of Alabama."

In the case of **Travelers Indemnity Company v. Wilkes County**, 102 Ga. App. 362, 116 S. E. 2d 314, the Court held, where the roof had been burned off a building, the building operations which were intended to restore it to its original condition constituted "repairs" rather than "construction." For other cases which contain similar definitions of the term construction," see **Words and Phrases**, Permanent Edition, Volume 8A, page 480, and Volume 36A, page 750.

When Chapter 4, supra, is considered in its entirety, we reach the conclusion that these statutory provisions were not intended to require that a contract such as the one here considered be awarded only to a general contractor.

Therefore, I am of the opinion that the proposed contract to which your request refers may be awarded to Jones Brothers Roofing Company of Montgomery.

Very truly yours,

MacDONALD GALLION
Attorney General

February 24, 1970

Honorable Winston Stewart
Executive Director

Association of County Commissioners of Alabama
660 Adams Avenue
Montgomery, Alabama 36104

Counties — Officers and Offices — Probate Judges —
Supernumerary Status — Retirement.

To qualify as a supernumerary a probate judge must be elected to that office and if on the fee system must make his first payment on August 29 next following his taking office.

Opinion by Assistant Attorney General Turner.

Dear Sir:

Your request for a formal opinion, dated December 8, 1969, is as follows:

"At the request of several probate judges who are on a fee basis, I ask your official opinion to the following questions:
"Section 4 of Act 606, 1969 Regular Session, relating to the Pro-

bate Judges' Supernumerary states: 'If such officials are compensated by fees and commissions, each such official, upon the effective date of this act and annually thereafter shall pay to the general fund of the county an amount equal to 4 percent of the total sum up to Fifteen Thousand Dollars (\$15,000.00) of all fees and commissions collected during the preceding twelve months as compensation as such official.' In substance, those probate judges who are on a salary basis shall begin deducting upon the effective date of this act (approved August 29, 1969) and each month thereafter from the salaries of such officials. It appears from the language of this act that those who are on a fee basis would be penalized over those who are on a salary in that the fee officials must make an annual payment in advance, whereas the salaried officials make their payments monthly.

"Assuming both to earn in excess of \$15,000.00 per annum, it appears that on August 29th of each year the fee official makes a \$600 payment. The salaried official makes a payment of \$50 then and each month thereafter. Assuming both will retire at the end of his respective term, apparently the salaried official will have paid in \$350 less than the fee official. This gives rise to several questions:

- "1. Is my assumption of the procedure correct and is such the intent of the statute?
- "2. In the example used in the above factual situation, is the fee official entitled to any rebate on the \$350?
- "3. If a fee probate judge dies in office, when does his successor make a payment?
- "4. When a new fee compensated probate judge assumes office at the beginning of his term in January of 1971, when does he make his first payment?"

The procedure as stated by you in your example follows the wording of the statute and is, therefore, correct.

Although, as stated in the particular factual situation, the fee official has paid in \$350.00 more than the salaried official, no provision is made in the Act for any rebate to a fee official simply because at a particular time of year he has paid in more than a salaried official.

The answer to your Question No. 3 requires a mutual interpretation of Section 4 and Section 7 of the Act. Section 4 states that if the official is compensated by fees and commissions, he shall pay to the general fund of the county an amount equal to four percent (4%) of the total sum up to \$15,000.00 of all fees and commissions collected during the preceding twelve months as compensation as such official. Section 7 states that the right to elect to become a supernumerary probate judge applies only to probate judges in counties who have been

elected to that office. Thus, if a fee-paid probate judge dies in office and his successor is appointed, then under Section 7 the appointed official would not qualify under the Act and need make no payment until he or another has been elected and taken office; then on the following August 29, payments should be made on the fees and commissions collected since the taking of office by the elected official.

A fee-paid probate judge assuming office in January of 1971, would make his first payment on the following August 29, 1971, and this payment should be based upon his compensation to that date.

Therefore, it is my opinion that your inquiries should be answered as indicated.

Very truly yours,

MacDONALD GALLION
Attorney General

February 25, 1970

Honorable Wiley Hickman
Judge of Probate, Etowah County
Gadsden, Alabama 35901

Taxation — Exemptions — National Banks — State Banks.

Public Law 91-156, 91st Congress, approved December 24, 1969, authorizing the several states to impose certain taxes on national banks is applicable only to national banking associations formed or organized under the provisions of Title 12 U.S.C. 21. The order of the Commissioner of Revenue, dated February 13, 1970, based on Public Law 91-156 is applicable only to such national banking associations and state chartered banks.

Opinion by Assistant Attorneys General Livingston and Loeb.

Dear Sir:

Your request for an official opinion dated February 19, 1970, is as follows:

“We respectfully request your official opinion on the following matter.

“On February 18, 1970, we received from the Commissioner of Revenue, a directive that all banks operating in the State of Alabama under a state or federal charter shall be subject to the following state taxes:

“a. Sales Tax levied by Act No. 100, Second Special Session 1959 and amendments thereto and use tax levied by Title

51, Article 11, Chapter 20, Code of Alabama 1940 and amendments thereto.

“b. Utility tax levied by Act No. 21, Special Session 1969.

“c. Deed and mortgage tax levied by Title 51, Sections 618 and 619, Code of Alabama 1940.

“d. Ad valorem tax on tangible personal property including motor vehicles and the license tax imposed on the use thereof.

“We would like to know if the following agencies will be taxed under this ruling:

- “1. Veterans Administration
2. Farmers Home Administration
3. Production Credit Association
4. Federal Land Banks
5. Federal Credit Unions
6. Federal National Mortgage Association

“An early ruling will be greatly appreciated.”

The directive or order issued by the Commissioner of Revenue, mentioned in your request, is as follows:

“WHEREAS, under the provisions of Act No. 242, First Special Session 1967 banks chartered by the banking authorities of the State of Alabama are not subject to state taxes unless such state taxes are also applicable to all banks and banking institutions, including national banks, doing business in the State of Alabama, and

“WHEREAS, the Congress of the United States has, by the adoption of HR 7491, (P.L. 91-156) approved by the President on December 24, 1969, amending Section 5219 of the Revised Statutes of the United States, authorized the several states to impose certain taxes on national banks;

“NOW, THEREFORE, it is hereby ordered by the Department of Revenue, State of Alabama, that effective February 1, 1970, all banks operating in the State of Alabama under a state or federal charter shall be subject to the following state taxes:

“a. Sales tax levied by Act No. 100, Second Special Session 1959 and amendments thereto and use tax levied by Title 51, Article 11, Chapter 20, Code of Alabama 1940 and amendments thereto.

“b. Utility tax levied by Act No. 21, Special Session 1969.

"c. Deed and mortgage tax levied by Title 51, Section 618 and 619, Code of Alabama 1940.

"d. Ad valorem tax on tangible personal property including motor vehicle and the license tax imposed on the use thereof.

"DONE this the 13th day of February, 1970."

Public Law 91-156, 91st Congress, approved December 24, 1969, is referred to as the National Bank Tax Act and is entitled "An Act to clarify the liability of national banks for certain taxes." The Act amends Title 12 U.S.C. 548 (Section 5219, Revised Statutes of the United States) which provides for state taxation of national banking associations formed or organized under the provisions of Title 12 U.S.C. 21. Throughout the Act only "a national bank" is referred to and no other federal instrumentality is mentioned therein. The directive or order, *supra*, issued by the Commissioner of Revenue was supplemental to and based on the authority granted to the states by Congress in said Act to impose certain taxes on national banks.

Therefore, it is my opinion that the agencies specifically mentioned in your request are not affected by or subject to the above order issued by the Commissioner of Revenue, dated February 13, 1970. Public Law 91-156, *supra*, is applicable only to national banking associations formed or organized under the provisions of Title 12 U.S.C. 21. It follows, then, that the order of the Commissioner of Revenue is applicable only to such national banking associations and state chartered banks. The taxability or nontaxability of the agencies mentioned in your request as well as all federal or state agencies or instrumentalities other than national and state banks is the same now as it was prior to the approval of Public Law 91-156, *supra*.

Very truly yours,

MacDONALD GALLION
Attorney General

March 2, 1970

Honorable E. R. Lindsey
Register in Chancery, Circuit Court
Tenth Judicial Circuit of Alabama
Equity Division, 225 Court House
Birmingham, Alabama 35203

Motor Vehicles — License Tags — Transfers — Judges
of Probate.

All persons, in counties of 300,000 or more inhabitants,

who are engaged in the business of selling motor vehicles or who otherwise dispose of them, including those who dispose of them under legal proceedings or court orders, are required to comply with the provisions of Subsection (d) of Section 706 of Title 51, as amended by Act No. 1032 of the 1969 Regular Session of the Alabama Legislature, approved September 12, 1969.

Opinion by Assistant Attorney General Burton.

Dear Mr. Lindsey:

Your request for an official opinion dated February 5, 1970, is as follows:

"Act No. 1032, 1969 Regular Session, approved September 12, 1969, provides, among other things, as follows: 'Any person, firm or corporation, engaged in the business of selling or otherwise disposing of motor vehicles shall furnish each purchaser thereof with a legal bill of sale on which there shall be printed, stamped or otherwise inscribed thereon in a bold and conspicuous manner the words: "Penalty of \$1.50 due if not transferred within ten (10) days."' "

"The section contains a penalty provision, reading as follows: 'Any person failing to perform the duty required by the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than twenty-five dollars (\$25.00) for more than one hundred dollars (\$100.00) for each offense.'

"As Register for a County within the population range covered by the above-quoted portions of the Act, I am frequently ordered by the Court to sell motor vehicles used in the transportation of illegal alcoholic beverages, gambling equipment or paraphernalia, and drugs or narcotics. It is my offhand opinion that, in making such sales, I am acting as an agent of the State of Alabama, that the sale is not by me but by the State of Alabama, and neither I nor the State of Alabama come within the category of 'any person, firm or corporation engaged in the business of selling or otherwise disposing of motor vehicles.' However, due to the penalty provisions contained in the Act, I hereby request an official opinion as to whether, in making such sales, I come within the quoted provisions of Act No. 1032."

In reading Subsection (d) of Section 706 of Title 51, as that section was amended by Act No. 1032 of the 1969 Regular Session of the Alabama Legislature, approved September 12, 1969, in its entirety it clearly appears that it is the intent of the Legislature that any person selling a motor vehicle in this State at a forced or judicial sale be included

within the provisions of Subsection (d) of Section 706, as amended, supra. Your question then is answered in the affirmative.

Subsection (d) provides, in this respect, as follows:

"(d) In counties having a population of 300,000 or more inhabitants according to the last or any subsequent federal census, any person who acquires a motor vehicle and fails to transfer ownership with the probate judge, or such other officer performing the duties of the probate judge, **or who fails to file a copy of the court order or memorandum of sale when a motor vehicle is acquired under legal proceedings or is repossessed, within ten (10) days from the date upon which the motor vehicle was acquired or repossessed,** shall be penalized the sum of one dollar and fifty cents (\$1.50). The penalty shall be allowed the probate judge, or such other officer performing the duties of the probate judge, and shall be paid to him when the change of ownership is reported or when the court order or memorandum of sale is filed. **Any person, firm, or corporation engaged in the business of selling or otherwise disposing of motor vehicles shall furnish each purchaser thereof with a legal bill of sale on which there shall be printed, stamped, or otherwise inscribed thereon in a bold and conspicuous manner the words: 'Penalty of \$1.50 due if not transferred within ten (10) days.'** Provided, further, that it shall be the duty of the person who acquires a motor vehicle to make application to the probate judge, or such other officer performing the duties of the probate judge, on forms prescribed and provided by him, for transfer of ownership. Where such application form is not completed prior to the time the applicant submits it to the probate judge, or such other officer performing the duties of the probate judge, it must then be completed or filled out completely by the probate judge, or such other officer performing the duties of the probate judge, and an additional fee of twenty-five cents (\$.25) shall be charged by the probate judge or such other officer performing the duties of the probate judge. Such additional fee shall be paid to the probate judge, or such other officer performing the duties of the probate judge, by the new owner. Provided, however, that in all counties where the probate judge, or such other officer performing the duties of the probate judge, is paid on a salary basis instead of a fee basis, the additional fee herein charged shall be paid by said probate judge, or such other officer performing the duties of the probate judge, into the treasury of the county or to the official performing the duties of county treasurer.

"Any person failing to perform the duty required of him by the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than

twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00) for each offense." (Emphasis supplied.)

It will be noted then that under Subsection (d) the purchaser of a motor vehicle at a forced or judicial sale is required to file within ten days from the date that the vehicle was acquired under the legal proceedings a copy of the court order or memorandum of sale and transfer the ownership of the vehicle and the license tag in the office of the judge of probate or the office of the officer performing the duties of the probate judge of the county in which the vehicle is registered, or suffer the penalties prescribed therein. Therefore, the purpose of the requirement under Subsection (d) that the seller make the notation to which you refer on the document transferring the title to the vehicle is to call the attention of the purchaser to the requirements of Subsection (d) and notify him of the penalties prescribed for his failure to comply with such requirements. And said requirements are made just as much so in the case of a judicial sale as they are in the case of a voluntary sale. This is not only emphasized under Subsection (d), but is also stressed under Subsection (c) of Section 706, as amended, *supra*.

Moreover, as the word "or," the disjunctive is used between the phrase "any person, firm or corporation in the business of selling" and the phrase "otherwise disposing of motor vehicles," this clearly seems to show an intent on the part of the Legislature, when considered with what has already been said, to include within the requirements of Subsection (d) all persons who are engaged in the business of selling motor vehicles and also all persons who sell them through a forced or judicial sale. The Legislature certainly has the prerogative to include within the scope of the Act in this respect officers of the court or others who sell motor vehicles at forced or judicial sales and clearly appears to have done so.

It is, therefore, my opinion that you, or anyone else similarly situated, are required under Subsection (d) of said Act to stamp or otherwise inscribe on the copies of the court orders or other memoranda of the judicial sales to which you refer, which are furnished to the purchasers at such sales, the words "Penalty of \$1.50 due if not transferred within ten (10) days." The purchaser in turn must within the time prescribed file with the judge of probate, or such other officer performing his duties, a copy of such document and at the same time transfer the ownership of the vehicle and the license tag or be subject to the penalties prescribed under Subsection (d) for failure to do so.

Very truly yours,

MacDONALD GALLION

Attorney General

March 9, 1970

Honorable Maury Friedlander

County Attorney

County Commission

Mobile County

Mobile, Alabama

Elections—Newspapers of General Circulation—List of Qualified Electors—Competitive Bid Law.

1. A newspaper to qualify as a medium of publication for publications required by law to be made in a newspaper must be published and circulated in the county wherein publication is required to be made, for the information of the public in general as to current events of local and public interest, as distinguished from publications for the information of some particular group, class, organization trade or profession, and must otherwise comply with the requirements of Title 7, Section 713, Code of Alabama 1940.

2. A contract for services to publish list of qualified electors, as required by law, must be awarded by competitive bid.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your request for an official opinion bearing date of February 23, 1970, is as follows:

"Title 17, Section 38, **Code of Alabama** (1940) requires Mobile County to publish a list of the qualified voters every two years 'in some newspaper with a general circulation in the county.'

"I would first like to know what is considered a 'newspaper with a general circulation in the county?' I would also like to know, assuming there are several newspapers of general publication in Mobile County, if this publication of voter lists must be handled under the Competitive Bid Law (Act 217) of the 1967 Legislature, Special Session?

"Thank you for your assistance and cooperation."

In answer to your first question as to what is considered 'a newspaper with a general circulation in the county,' your attention is directed to an opinion of this office appearing in Quarterly Report of Attorney General, Vol. 35, page 82, wherein it was stated:

"In 28 Words and Phrases (Per. Ed.) p. 602, cases are cited

from various other jurisdictions construing the meaning of the phrase 'newspaper of general circulation.' The purport of these cases is that such a newspaper is one that circulates among all classes and is not confined to a particular class or calling in the community,—publishing intelligence of passing events and news items of interest to the general public of such a character that the reading public might well look to such a paper to learn the news of current events. Such a newspaper is one published for the dissemination of local or telegraphic news and intelligence of a general character, having a bona fide subscription list of paying subscribers, and is to be distinguished from one devoted to the entertainment or enlightenment of some particular class, profession, trade, calling, race or denomination."

I hereby reaffirm the holding of this opinion in regard to what constitutes 'a newspaper of general circulation.'

You will note in this opinion that it was stated the question of what constitutes 'a newspaper of general circulation,' is one of fact and must be determined at the local level.

In answer to your second question, it is my opinion that the list of qualified voters required to be published every two years must be handled under the competitive bid law described herein as Act No. 217, Special Session of the 1967 Legislature, Page 259.

Section 2 of said Act sets forth certain services and contracts which need not be awarded by competitive bid. I find nothing in this section which exempts the publication of the list of qualified voters from the operation of the Act.

This office has on several occasions ruled that all contracts for services not exempted under Section 2 of Act No. 217, supra, must be awarded by competitive bid as set forth in said Act.

Yours very truly,

MacDONALD GALLION
Attorney General

March 9, 1970

Honorable Huey B. Holland
Tax Assessor

Dale County
Ozark, Alabama 36360

Taxation — Ad Valorem Tax — Soldiers' and Sailors' Civil
Relief Act.

The situs for ad valorem tax purposes of personal property of personnel in the military service is in the state of domicile of such personnel regardless of where they may be stationed in compliance with military or naval orders or where their personal property may be physically located.

Opinion by Assistant Attorney General Livingston.

Dear Mr. Holland:

Your request for an opinion dated February 19, 1970 is as follows:

"We need an opinion on whether an Alabama serviceman is exempt from ad valorem taxes in a case such as one described below when he gets his tag exempt.

"An Alabama resident, who is now outside the State of Alabama in service, and whose wife is staying in this county while he is away gets his certificate of exemption from him and comes into this office to assess his car. This car has a present North Carolina registration which expired on February 15, 1970. The car was brought into the State of Alabama on November 5, 1969 from North Carolina. We assessed taxes against the car since a free tag was to be issued for it.

"Our question is: Should we have charged this or exempted it from taxes since the car was not in the State of Alabama at all during the 1969 tax year for which we are assessing taxes. So far as we know, there were no taxes paid in the State of North Carolina when registered there for 1969 tags."

In order to advise you, it is necessary to consider the provisions of Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended (Title 50, Section 574, USCA), which provides, in part, as follows:

"(1) For the purposes of taxation in respect of any person, or of his personal property, income, or gross income, by any State, . . . such person shall not be deemed to have lost a residence or domicile in any State, . . . solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, . . . while, and solely by reason of being, so absent. For the purposes of taxation in respect of the personal property, income, or gross income of any such person by any State, . . . of which such person is not a resident or in which he is not domiciled, . . . personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, or political subdivision, or district. **Where the owner of personal property is absent from his residence or domicile solely by reason of compliance with military or naval orders,**

this section applies with respect to personal property, or the use thereof, within any tax jurisdiction other than such place of residence or domicile, regardless of where the owner may be serving in compliance with such orders: . . . (Emphasis added.)

“(2) When used in this section, (a) the term ‘personal property’ shall include tangible and intangible property (including motor vehicles), and (b) the term ‘taxation’ shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: **Provided**, That the license, fee, or excise required by the State, . . . of which the person is a resident or in which he is domiciled has been paid.”

In Quarterly Report of the Attorney General, Volume 122, page 28, it was held that motor vehicles of **nonresident** personnel in the military service stationed in Alabama in compliance with military or naval orders on which an Alabama ad valorem tax lien has not attached are not subject to ad valorem tax in Alabama. See also Quarterly Report of the Attorney General, Volume 81, page 16 and **Dameron v. Brodhead**, 345 U. S. 322, 73 S. Ct. 721, 32 ALR 2d 612.

As I understand the facts from your letter, the domicile of the serviceman involved is in the State of Alabama and he is stationed outside Alabama under military orders. His car was brought into Alabama on November 5, 1969 from North Carolina and a free Alabama license tag for the license year 1970 was obtained for the car under the provisions of Act No. 739, Acts of Alabama 1969.

Under the Soldiers' and Sailors' Civil Relief Act, *supra*, the situs of the motor vehicle in question for ad valorem tax purposes is and has been in the State of Alabama all the time since the Alabama resident serviceman acquired the motor vehicle. In Quarterly Report of the Attorney General, Volume 129, page 35, after referring to the underscored provisions of Section 514, *supra*, which were added to said section in an amendment thereto in 1962 by Public Law 87-771, it is stated:

“This amendment makes it clear that the situs for ad valorem tax purposes of personal property, which includes motor vehicles, of personnel in the military service is in the state of domicile of such personnel regardless of where they may be stationed in compliance with military or naval orders or where their personal property may be physically located.”

Therefore, it is my opinion that the motor vehicle in question was subject to ad valorem tax for the tax year 1969 (October 1, 1968 -- September 30, 1969) assuming, of course, that it was acquired by the serviceman during said tax year or owned by him for the entire tax year 1969. If he owned it for the entire tax year, ad valorem tax for the full year was due; if he acquired it during the tax year 1969, the tax due should be computed on the quarterly declining basis as provided in Title 51, Section 704, Pocket Part, Code of Alabama 1940, Re-

compiled 1958, depending on the date the motor vehicle was acquired by the serviceman. Under the facts presented and in view of the Soldiers' and Sailors' Civil Relief Act, the actual date that the motor vehicle was brought into the State of Alabama is of no consequence in this particular situation.

Very truly yours,
MacDONALD GALLION
Attorney General

March 10, 1970

Honorable Woodrow J. Stephens
President, Etowah County Board of Revenue
Gadsden, Alabama 35901

Counties — Highways and Highway Department — Roads and Bridges.

1. The authority of the county governing body to do or perform work or to rent and lease equipment of the county for work on private property is predicated upon there being no present need for the use of such personnel or equipment for public county purposes and upon the further fact that the county be justly compensated for the services rendered.

Opinion by Assistant Attorney General Lawley.

Dear Sir:

Your request for an official opinion bearing date of February 11, 1970 is as follows:

"(1) Is it contrary to law for a member of the Board of Revenue to use public employees or public funds to install, repair or maintain driveways or roadways on private property?

"(2) If your answer to the above is in the affirmative, is it contrary to law to maintain such driveways or roadways when they are used by mail carriers, school buses, or have been maintained by the county in the past?

"(3) Is it necessary, as a matter of law, that before public employees or public funds can be used to install or maintain a driveway or roadway, said driveway must have been deeded as such to the county, dedicated by the filing of a plat of a subdivision, or used openly, notoriously and continuously for a period of years?"

The latest laws on this subject are Act No. 217, Regular Session

1969, and Act No. 780, Regular Session 1969. These acts state that proceeds from license taxes, registration fees, gasoline and other motor fuel taxes must be used on public highways, streets, roads and bridges. This is in conformity with Amendment 93 to our State Constitution.

However, in Quarterly Report of Attorney General, Volume 99, page 26, the Attorney General has drawn a sharp distinction between work performed and labor and materials furnished for private roads, driveways, etc., where such is without cost to the property owner and those cases where the reasonable cost is paid by the property owner. A county governing body can perform work or rent and lease equipment of the county for work on private property, predicated upon there being no present need for the use of such personnel or equipment for public county purposes and upon the further fact that the county be justly compensated for the services rendered. These are matters to be determined in a reasonable manner by the county governing body. Public funds cannot be used in any work on private property.

Second, it is contrary to law to maintain driveways or roadways with public employees or equipment unless they are public roads or come under the situation described in Question 1.

Finally, the requirements stated in your third question are necessary for a public road. If these requirements are met, then public employees or public funds can be used on such road.

Very truly yours,

MacDONALD GALLION
Attorney General

March 12, 1970

Honorable Kyle Bryan

Tax Assessor

Blount County

P. O. Box 683

Oneonta, Alabama 35121

Tax Assessors—Book of Assessments—Abstracts—Tax Collectors.

Section 65, Title 51, Code of Alabama 1940, is mandatory in its language and the Tax Assessor must prepare and deliver to the Tax Collector the book required by that section.

Opinion by Assistant Attorney General Burson.

Dear Mr. Bryan:

Your request for an opinion dated February 20, 1970 is as follows:

"Section 65, Title 51, Code of Alabama 1940, provides that the Tax Assessor, after the books of assessments have been completed, must enter in a book in concise form, the amount of taxes assessed against each taxpayer showing separately the amount of taxes on real estate and personal property and other subjects of taxation, the total amount of taxes due, the address of the taxpayer and the fees of the assessor with a blank for the fees of the Tax Collector and such book must be turned over to the Tax Collector on or before the 15th day of September.

"It has been the practice for the Tax Assessor to make a list of assessments by name, address, assessed valuation and total taxes due and deliver such list to the Tax Collector in compliance with Section 65, Title 51, Code of Alabama 1940. Is it permissible under Section 65, Title 51, Code of Alabama 1940, not to prepare the list as stated above and deliver to the Tax Assessor, but instead abstract to the Tax Collector the total amount of taxes according to real and personal property by each book of assessments in the Tax Assessor's office. The book of assessments, showing each individual assessments, name, address and assessed valuation according to real and personal property and total taxes due could be delivered to the Tax Collector for the collection of taxes and then returned to the Tax Assessor's office. Such procedure would eliminate a considerable work load on the tax Assessor's office."

Your question must be answered in the negative. It is not permissible under Section 65, Title 51, Code of Alabama 1940, to fail to prepare the list required to be delivered by the Assessor to the Collector by the said section. While your proposal appears to have certain merit, it has apparently been advanced on prior occasions and rejected because of the mandatory nature of Section 65, *supra*, and because behind the mandatory language of the section there exists the necessity of maintaining proper checks and balances between the office of the Tax Assessor and the Tax Collector. In view of the fact that your proposal appeared to have merit, I asked the Examiners of Public Accounts to give me their opinion concerning your proposal. They were most emphatic that it was essential that the book required by Section 65, *supra*, be delivered by you to the Tax Collector. Otherwise, proper accounting procedures would not and could not be followed. In fact, they, the Examiners, stated that if you did not prepare the book it would be necessary for the Collector to abstract this information from your records or the assessment rolls if you delivered the assessment rolls to him.

According to an opinion reported in Quarterly Report of Attorney General, Volume 6, page 3, a local act applicable to Henry County attempted to provide for the same elimination of the book required by Section 65, *supra*, as is proposed by you. Said Act No. 346, Extra Session 1932, Page 124, provided in part, as follows:

"Section 1. That the lists or sheets whereon are entered property for ad valorem taxation in Henry County, Alabama, shall by Assessor be substantially bound alphabetically by beats and labeled accordingly and to serve for all purposes in lieu of books of assessments upon which such assessments from said lists or sheets are required by the general laws of said State to be transcribed and **thereby abandon in said county the preparation, use and expense of said books.**

"Section 2. That from said bound lists or sheets and alphabetical recapitulation by beats shall, by Assessor, be made in book form as a permanent record showing names of tax payers, totals of items of property, valuation thereof and taxes thereon, and from which receipts for collections of taxes shall, by Collector, be issued and thereby save expense of abstract." (Emphasis supplied.)

Among the other questions asked by the Tax Assessor of Henry County in the above opinion was this question:

"2—Under local act above quoted, is Assessor required to prepare and complete Tax Abstract as provided in Revenue Bill Sec. 58 as above quoted?"

The answer of the Attorney General first questioned the constitutionality of Act No. 83 which attempted to relieve the Tax Assessor of Henry County of the responsibility of preparing the book required to be delivered to the Tax Collector. Second, the opinion stated that whether it was constitutional or not the 1932 Act had been superseded and repealed by the General Revenue Act of 1935, and Section 58 of said Revenue Act, which is the same as Section 65, *supra*, requires the making of the abstract by the Assessor for the Collector. Thus, the above opinion holds that the preparation of the book is required.

Another opinion that seems to have a direct bearing on your question is contained in Quarterly Report of Attorney General, Volume 23, Page 153. The question posed by the Chief Examiner of Public Accounts is, in part, as follows:

"The question now arises as to whether or not, under our Uniform Accounting System, the State has the authority to require the Jefferson County Commission and the Treasurer to maintain complete controlling records in their respective Birmingham offices of all transactions, including the issuance of requisitions and purchase orders, or whether under Act 490, page 549, General Acts of 1915 the County Commission and

the Treasurer have the authority and/or the duty of maintaining complete controlling sets of records in their Bessemer Cut-Off branch offices?

* * * * *

"For your information, it is my opinion that we have the authority and the duty to require complete and all controlling sets in the Birmingham offices of the County Commission and the County Treasurer but that, on the other hand, the County Commission and the Treasurer have the authority to keep or have kept any subsidiary or extraneous records they may desire in their Bessemer branch offices."

The answer in the opinion of the Attorney General was, in part, as follows:

"The Supreme Court of Alabama, in the case of **Board of Revenue and Road Commissioners of Mobile County v. The State of Alabama, ex rel. George E. Stone, as Treasurer of Mobile County, Alabama**, decided April 24, 1941, (M.S.) has spoken to the effect of the Uniform System of Accounting and Report Act as follows:

"The Act of 1935 (General Acts 1935 p. 43) makes provisions for "establishing and maintaining a uniform system of accounting and reporting in the county offices in all counties of this State whose officers are charged with the duty of receiving, disbursing and accounting for any public funds or other funds."

* * * * *

"But, as above indicated in the title of the 1935 Act, these Acts look to a uniform system of accounting and reporting, the evident purpose being to facilitate the examination of the books and records of all such officials. The 1935 Act in Sections 2 and 3 makes express reference to accounting and reporting to the end that a "Uniform System of Accounting and reporting in County offices shall be established."****

"There is nothing in the Act indicating a legislative intent to disturb any substantive provisions of the law or to work any change in the duties imposed by law upon such county officials. And it is clear enough the meaning of the words "accounting" and "reporting" as used in the Act and as defined in Webster's International Dictionary would not justify such interpretation.' "

Thus, the Attorney General has concluded that the accounting system established by the 1935 Act (General Acts of Alabama, page 43) cannot be abrogated by the Examiners of Public Accounts. It follows, therefore, that specific accounting provisions such as those set forth in Section 58 (now Section 65, supra), General Revenue Act of

1935, likewise cannot be abrogated. They can be changed only by the Legislature or, of course, by judicial decree if any part thereof is contested in the Courts.

An opinion of the Attorney General, Biennial Report 1926-1928, page 503, is concerned with whether or not the Assessor must make an abstract of all automobile assessments and deliver them to the Tax Collector within the purview of Acts, 1923, page 289, Section 19. The opinion of the Attorney General stated in substance that it was clear that the Legislature did not intend that the Tax Assessor was required to abstract the motor vehicle assessments under the provisions of Sections 43, 44 and 45, Revenue Act of 1923 (same as Sections 63, 64 and 65, Title 51, *supra*) because motor vehicles are being assessed throughout the year whereas the assessment of other property is terminated at a given period so that the books with these closed assessments therein can be compiled and delivered to the Collector. The opinion is clear that the Assessor cannot be relieved of his responsibility for delivering the regular abstract book required by what is now Section 65, *supra*, and was then Section 45 of the Revenue Act of 1923.

Opinion of the Attorney General, Biennial Report 1932-1934, page 344, is authority for the fact that the Tax Assessor must complete the abstract required by Section 45 of the Revenue Act of 1923 (now Section 65, *supra*) as soon as complete assessments are received by him but that his compensation for the preparation of the book should not be held up even though some of the assessments are in litigation. That is, he does not have to wait until the litigation has been terminated before he is compensated for preparation of the abstract.

Opinion of the Attorney General reported in Quarterly Report of Attorney General, Volume 16, page 23, is authority for the fact that the Assessor must prepare an abstract of assessments for the Collector and that this abstract must show not only the State assessments but likewise county, municipal and special taxes.

Thus, it is reiterated that your question must be answered in the negative and in support of this answer we cite first the mandatory nature of Section 65, *supra*, which states in part that "after the book of assessments has been completed as provided in this title, the Tax Assessor must enter in a book in concise form, the amount of taxes assessed against each taxpayer, showing separately the amount of taxes on real estate and personal property and other subjects of taxation, and the total amount of tax due, and the address of the taxpayer and the fees of the Assessor with a blank for the fees of the Collector, and such book he must turn over to the Tax Collector on or before the fifteenth day of September"; second, the opinion of the Examiners of Public Accounts which is the agency charged with the responsibility of auditing the records of county officials; and third, the several opin-

ions of the Attorney General, one or more of which are directly in point.

Yours very truly,

MacDONALD GALLION
Attorney General

March 25, 1970

Honorable John E. Adams, Jr., Chairman
Clarke County Board of School Trustees
Grove Hill, Alabama 36451

Schools—School Trustees—County Board of Education.

Under the provisions of Sections 100, 144, and 147 of Title 52, Code of Alabama 1940, Recompiled 1958, school trustees have the exclusive right to grant or deny the use of school buildings, auditoriums, gymnasiums, football fields, and other property on the school site for civic, social, recreational and community gatherings.

Opinion by Assistant Attorney General Madison.

Dear Mr. Adams:

Your request for an official opinion bearing date of March 18, 1970, is as follows:

"I am Chairman of the local Board of School Trustees of Clarke County High School in Grove Hill, Alabama, and our Board has been requested to grant permission to community groups to use our school auditorium for their gatherings.

"I observe from Title 52, Section 147, that we apparently have the power to authorize such use of the "school house" and I am wondering if our authority in this respect extends also to the other school buildings, such as the auditorium, the gymnasium, the football field, etc.

"Will you please advise what our powers are in the foregoing respects? One reason for my requesting your opinion in this matter is that some of the local citizens requesting the use of these facilities tell me that the County Board of Education has undertaken to deny them the right to use some of these facilities on occasion, and they have come to me and want to know if it is our prerogative to grant permission rather than the County Board, and I simply do not know. Of course, we do not expect a controversy with the County Board, but I do want to know what our rights are so that we might be in position

to properly answer questions of this nature as they arise in the future. Will you please therefore also include in your opinion an expression as to whether the County Board also has the right to authorize such use of such facilities and, in the event of conflict, which of the two Boards is controlling.”

The statutes of this state provide for school trustees. Their duties are set forth in Section 100, as amended, Title 52, Code of Alabama 1940, Recompiled 1958, and Sections 138-147 of the same Code.

These duties are separate and distinct from those of the county boards of education. Each should operate within its own field and exercise its own judgment and discretion as to the proper performance of the duties placed upon it by law. See opinion of December 5, 1956, to Honorable C. F. Newell, Superintendent, Calhoun County Schools; **Roberts v. Bright, et al.**, 222 Ala. 677, 133 So. 907.

The opinion of this office under date of February 28, 1957, to Honorable W. Bemon Lyon, Superintendent of Education, Marshall County, Alabama, was in answer to the following question:

“Where the Board of School Trustees of a particular school has authorized the use of such school house for weekly dances or other civic, social, recreational or community gatherings may the County Board of Education over-ride the trustees and prevent such use of the school house?”

The answer was in the negative by virtue of Section 147, Title 52, Code of Alabama 1940, Recompiled 1958.

Then, again on October 16, 1967, in an opinion to Honorable David C. Brown, Superintendent, Colbert County Schools, this office ruled that the school trustees had authority to prohibit the use of the school gymnasium for dances and other functions of the students. It was pointed out that by virtue of Sections 144 and 147, Title 52, Code of Alabama 1940, Recompiled 1958, the school trustees have the care of the buildings and grounds, the school apparatus and other school property, and had the power to authorize or refuse the use of the school-house for civic, social, recreational, and community gatherings.

In determining the meaning of the word “schoolhouse,” as used in the statute, it must be kept in mind that the statute applies to the many schoolhouses in rural areas, some small, as well as the much larger schoolhouses and sites in other areas. It is well to point out here also that trustees serve elementary and high schools, including county high schools. Biennial Report of Attorney General, 1930-1932, page 284.

In 38 Words and Phrases, “Schoolhouse,” Permanent Edition at pages 464 and 465, I find the following here pertinent:

“A ‘schoolhouse’ is a building which is appropriated for the use of a school or schools, or as a place in which to give in-

struction. A 'schoolhouse,' within Civ. Code 1913, par. 2736, as amended by Laws 1925, c. 24, providing for the issuance of bonds for building schoolhouses, is any building which is appropriated for a use prescribed or permitted by law to public schools. *Alexander v. Phillips, Ariz., 254 P. 1056, 1058, 52 A.L.R. 244.*

* * * * *

"Equipment, land, and additions included

"Contracts to supply storage space in a garage under a stadium was within the meaning of 'repairing' or 'enlarging' a 'schoolhouse' within the bidding statute. *Board of Ed. of City of Asbury Park v. Hoek, 183 A.2d 633, 645, 38 N.J. 213.*

"As used in Laws 1927, c. 147, § 1, authorizing a bond issue for the construction or enlarging of school houses, the word 'schoolhouse' includes the entire school plant and may therefore include a gymnasium, or place for the giving of athletic training or instruction. *McNair v. School Dist. No. 1 of Cascade County, 288 P. 188, 191, 87 Mont. 423, 69 A.L.R. 866.*

" 'Schoolhouses,' as used in Comp. St. § 1885, providing that the board of school trustees shall have power to build or remove schoolhouses, when directed by a vote of the district to do so, does not mean simply the house, but refers rather to the school, including the general equipment, furniture, maps, charts, globes, and pupils and teacher. *State v. Marshall, 32 P. 648, 649, 13 Mont. 136.*

" 'House' is said to be synonymous with 'messuage,' and to embrace an orchard, garden, curtilage, adjoining buildings, and other appendages of a dwelling house. In a grant or devise of a 'house,' the curtilage will pass, even without the words 'with the appurtenances' being added. It is held in this case that the word 'schoolhouse' included the site. *City of Topeka v. State, 67 P. 559, 561, 64 Kan. 6.*

"In a statute providing that the school trustees shall have the power to remove 'schoolhouses' when directed by a vote of the district, the term 'schoolhouse' does not mean simply the house, but refers rather to the school plant, including the general equipment, furniture, maps, charts, globes, and pupils and teacher. A school board cannot disregard the right of the people to say what shall be done with reference to the permanent location of the schools. *State ex rel. Bean v. Lyons, 96 P. 922, 923, 925, 37 Mont. 354, quoting and adopting definition in State ex rel. Jay v. Marshall, 32 P. 648, 13 Mont. 136.*"

It is my opinion therefore that the authority of your Board of School Trustees extends to the civic, social, recreational, and community

use of other school buildings, such as the auditorium, gymnasium and football field located on the school site.

Cordially yours,

MacDONALD GALLION

Attorney General

March 31, 1970

Dr. Ira L. Myers

State Health Officer

State Department of Public Health

State Office Building

Montgomery, Alabama 36104

Counties—Health and Health Department—Municipalities—Solid Waste Disposal—Tax Assessors—Tax Collectors.

1. County or municipal governing body may provide for collection and disposal of solid wastes, may establish fees, charges and rates and may enter into mutual contracts with governing bodies of other counties, municipalities, corporations or individuals. Act No. 771, Regular Session 1969.

2. County or municipal governing body may not designate Tax Assessor or Collector as collecting agents for fees, charges or rates charged for disposal of solid wastes.

Opinion by Assistant Attorney General Webb.

Dear Dr. Myers:

I have your request for opinion dated March 23, 1970, as follows:

"The attached letter from the Shelby County Health Department poses questions concerning the legal authority of county governing boards to utilize the offices of the County Tax Assessor and Collector as a billing and collection agency for solid waste management services as granted under Alabama Act No. 771.

"Several counties other than Shelby are studying the feasibility of mandatory collection of solid wastes management fees, and we would greatly appreciate your office addressing itself to these questions."

The attached request from the County Sanitarian, Shelby County Health Department, dated March 10, 1970, reads as follows:

"Act #771 appears to adequately authorize county governing bodies to assess fees for the collection of solid wastes outside corporate limits. Also inside limits when requested. To implement this much needed service, particularly in rural counties, it has been proposed that the county governing body utilize the offices of the County Tax Assessor and Collector as a billing and collection agency on an annual basis.

"In as much as many county governing boards may choose to use this method for fee collection, it is suggested that an opinion from the State Attorney General be sought in regard to the legality of: 1. The county's authority to instruct the Tax Assessor to add the necessary annual garbage fee to each dwelling assessed. 2. Would the Tax Collector have the authority to sell property in the event the owner failed to pay the garbage collection fee along with the assessed taxes.

"Your assistance in securing this opinion will be greatly appreciated."

The act referred to by you is Act No. 771, Regular Session 1969. This act authorizes the various county and municipal governing bodies to provide for collection and disposal of solid wastes, to contract for such services to be performed by others, to form into districts or areas beyond the corporate limits in cooperative agreements with other governing bodies, and to establish fees, charges and rates for such services. Sections 5(a) and 5(b) further specifically provide for such fees, charges and rates to be collected within cooperating areas or districts inside or outside the corporate limits of municipalities or inside or outside of county boundaries. Under these sections, this department held in an opinion to you dated January 28, 1970:

"Based on the specific wording of Sections 2(a) and 5(a) and (b), above quoted, I am of the opinion that the counties and municipalities of a five-county area may join together in a mutual agreement or contract and establish territories or collection districts, thereby establish fees, charges and rates, collect and disburse funds within the cooperating areas, and enter into such contracts with the individual collectors of solid wastes and individual billing services with other utilities or with private individual billing companies under such terms and conditions as deemed most expedient for purposes of carrying out the provisions of this Act. Of course, all contracts entered into under the provisions of this Act are subject to review and approval by the State Department of Health and affected county board of health and state or affected county health officer or his designee."

However, it was further stated in that opinion that appropriate action, in the event of a citizen's objection to the payment of such portion of a utility charge, would have to be civil as no criminal actions have been created under the provisions of Act No. 771, supra, other than a misdemeanor provided for in Section 6 for violation of the provisions of the act or rule or regulation made pursuant to the act by the state or county boards of health. It was further held that this would be insufficient for prosecution of a person for failure to pay the utility or contract charge. Any civil action provided would depend upon the nature of the contract or contracts entered into by the various governing bodies and the affected citizens or householders.

The authority of the Tax Assessors and Collectors is specifically established by law in the various sections of Title 51, Code of Alabama 1940, Recompiled 1958, and amendments thereto. Tax Assessors and Collectors are, as other officials of the county, limited in authority to that specifically granted by statute or necessarily inferred by the statute. I am unable to find any statute granting authority to an Assessor or Collector to assess and collect utility charges of this type nor do I believe that any such authority may be inferred from the provisions of Act No. 771, Regular Session 1969. This act, as previously stated, authorizes the county and municipal governing bodies to contract with private individual billing companies under such terms and conditions as deemed most expedient. However, in my opinion, such authority does not carry to the contracting by such governing bodies with public officials either in their official or individual capacity. Cf. Title 41, Sections 211 and 221, Code of Alabama 1940, Recompiled 1958.

Very truly yours,

MacDONALD GALLION
Attorney General

I N D E X

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INFORMAL OPINIONS

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